

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	CRIMINAL ACTION NO.
v.	)	2:17cr434-MHT
	)	(WO)
KENNETH LESTER BAXLEY	)	

OPINION AND ORDER

This cause is before the court on the motion to continue made by defendant Kenneth Lester Baxley on October 30, 2017. For the reasons set forth below, the court finds that jury selection and trial, now set for December 4, 2017, should be continued pursuant to 18 U.S.C. § 3161(h)(7).

While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making

public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Baxley in a speedy trial. Baxley is charged with escape from a Federal Bureau of Prisons facility. Under the previous trial schedule,

the government's initial disclosures were due to defense counsel on October 16, 2017. Upon receipt of that discovery, defense counsel learned of events that occurred while Baxley was in the custody of the Bureau of Prisons, which events require additional investigation. This investigation will require time to review Baxley's prison records and mental-health issues. In light of the limited time defense counsel will have to conduct this investigation, the current November 6 trial date does not provide enough time to prepare for jury selection and trial. A continuance is warranted and necessary to allow counsel for Baxley to prepare adequately and effectively.

The government does not object to a continuance.

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Accordingly, it is ORDERED as follows:

(1) The motion for continuance of defendant Kenneth Lester Baxley (doc. no. 15) is granted.

(2) The jury selection and trial, now set for December 4, 2017, are reset for March 12, 2018, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 31st day of October, 2017.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE